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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,440	04/01/2004	Richard J. Macor	APT0404	7786

7590 09/15/2005

Richard J. Macor
Proprietary Technologies, Inc.
26 Alpaugh Drive
Asbury, NJ 08802-1213

EXAMINER

SHAKERI, HADI

ART UNIT	PAPER NUMBER
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3723

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/815,440

Applicant(s)

MACOR, RICHARD J.

Examiner

Hadi Shakeri

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claims 4, 6, 8, 12, and 18 are objected to because of the following informalities: regarding claims 4, 6, 8, 12 and 18, the language as recited renders the claims objectionable, since the total length of the pliers tool cannot be “generally equal to...than five times...**and** generally equal to...than six times”. 112, 2nd paragraph is not applied since the scope is clear per specification as originally filed, i.e., of a range between 5 to 6 times.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 15-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding claim 15, the word "means" is preceded by the word(s) "tongue and groove" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). Note that the means plus language has to meet the three-prong test, i.e., must use the phrase “means for” (the words “means” and “for” need not be immediately adjacent each other); must include function; and must not be modified by sufficient structure. It appears, per specification as originally filed, that applicant is not attempting to invoke 35 U.S.C. 112, 6th paragraph of equivalency of “means for” adjusting the spacing of the jaws but rather that a specific mechanism, i.e., tongue and groove, however, the record should be clear.

Claim Rejections - 35 USC § 102

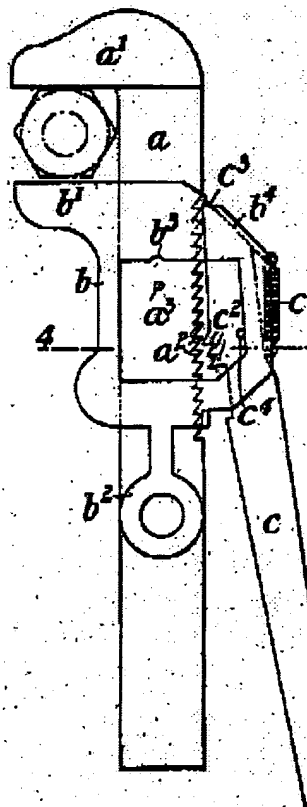
5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Stocker (588,365).

Stocker discloses all of the limitations of claims 1 and 9, i.e., an adjustable type pliers tool comprising a first tool member pivotally attached to a second tool member, each said tool member having a handle portion (c, a), and a head portion (b, a¹) comprising a jaw (b¹, a¹); said first tool member being formed having a slot, said second tool member being formed having pin (a³) attached thereto for interaction with the slot of said first tool member, the head portion of said first tool member having a distinct outer shape when said plier tool is viewed from a side view thereof, the distinct outer shape comprising a first section, a second section and a third section with the second section positioned between said first and third sections, and, the first section having a substantially convex curved outer shape, the second section having a substantially concave curved outer shape, and, the third section having a substantially convex curved outer shape so as to provide said adjustable plier tool with excellent jaw engagement accessibility, wherein the slot extends generally perpendicular to the work engaging surface.



Regarding claims 2 and 10, Stocker meets the limitations, e.g., second jaw having the distinct outer shape (third section just above b²).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

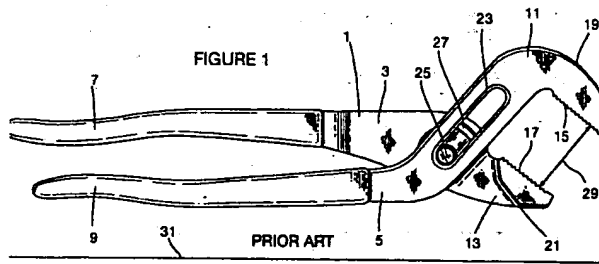
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3, 4, 6-8, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stocker.

Stocker as applied above meets all the limitations of the above claims, except for disclosing an overall tool length being between 5 and 6 times the maximum spacing between the jaws. Stocker appears to disclose a ratio of about 6.5, i.e., 103 mm overall length and 16mm maximum spacing. However, choosing the overall length to be shorter for ease of storage and/or carrying, e.g., of about 90 mm would be well within the knowledge of one of ordinary skill in the art.

9. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicants Admitted Prior Art (AAPA) in view of either Macor (6,484,610).

AAPA, e.g., Fig. 1 meets all of the limitations of the above claims, except for the unique outer shape and the dimensions of the pliers, i.e., overall length ratio with respect to the maximum spacing.

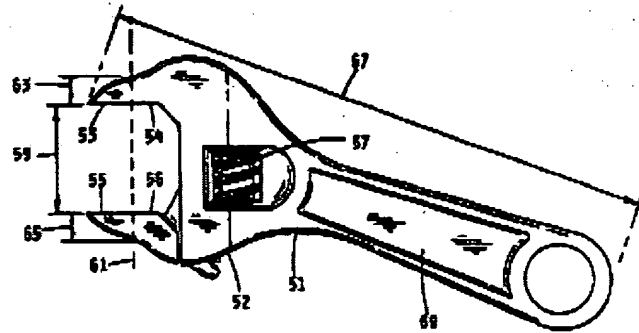


Macor teaches accessible adjustable wrench having the distinct outer shape and specific dimension ratios, e.g., shorter handle lever. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the invention of AAPA with the jaw

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shapes and overall dimensions as taught by Macor to adapt the tool for engaging and accessing fasteners located in limited access environment.

With regards to the overall dimension relative to the maximum spacing of the jaws, Macor teaches a ratio of less than 7, including embodiments (e.g. less than 6) meeting the open ended range of claims 3, 7, 11, 13, 17 and 19, with regards



to claims 4, 6, 8, 12, and 18, further modifying the range for a particular application, e.g., between 5 and 6, would be well within the knowledge of one of ordinary skill in the art and since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Conclusion

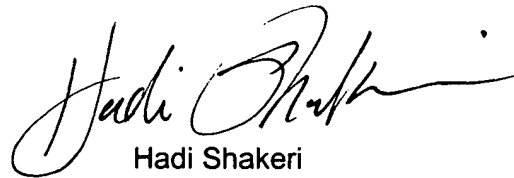
10. Prior art made of record and not relied upon are considered pertinent to applicant's disclosure. Budrow et al., Kilgore, Norris, Neely, Hoeft and Stokes are cited to show related inventions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hadi Shakeri whose telephone number is (571) 272-4495. The examiner can normally be reached on Monday-Thursday.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Hadi Shakeri', with a stylized flourish extending to the right.

Hadi Shakeri
Primary Examiner
Art Unit 3723
September 12, 2005